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R.R., Appellant)	
)	
and)	Docket No. 16-1901
)	Issued: April 17, 2017
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Tucson, AZ, Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has established a left shoulder condition causally related to the accepted March 27, 2013 employment incident.

FACTUAL HISTORY

On July 30, 2013 appellant, then a 53-year-old housekeeping aid, filed a traumatic injury claim (Form CA-1) alleging that on March 27, 2013 he sustained a left shoulder condition when he fell against the wall after stepping on a stack of loose floor tiles.

In support of his claim, appellant submitted a March 27, 2013 employing establishment health clinic note from Dr. Sonia M. Perez-Padilla, a Board-certified internist. He reported that at 6:35 a.m. that morning he had walked into his supply closet, there were some loose tiles on the floor, his foot slipped on the tiles, and he fell back hitting his left posterior shoulder on the wall. Appellant noted pain and stiffness in the shoulder with tingling into the left hand. Physical examination findings included normal, active range of motion of the left shoulder with some crepitus. Discomfort with palpation of the posterior left shoulder was noted which did not impact the cervical or thoracic vertebral area. Dr. Perez-Padilla diagnosed left shoulder contusion/strain and released appellant to full duty.

In a July 25, 2013 note, Dr. William F. Rees, a Board-certified internist, indicated that appellant's left shoulder, left ankle, and left knee pain were improving. He noted that appellant injured himself one to two months ago at work. Dr. Rees diagnosed left shoulder pain, suspect rotator cuff tear, ankle pain, improving left knee pain, hypertension, and post-traumatic stress disorder. Appellant also submitted a July 30, 2013 x-ray that was interpreted by Dr. Jennifer H. Alcala, a Board-certified radiologist, as lucency through the greater tuberosity, which could reflect an acute fracture site without significant displacement.

By letter dated August 6, 2013, OWCP informed appellant that further evidence, including medical evidence, was needed to support his claim. Appellant was afforded 30 days to submit this evidence.

By letter dated September 13, 2013, the employing establishment controverted the claim.

In a decision dated September 16, 2013, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the incident occurred as alleged.

On June 17, 2014 appellant requested reconsideration. In his request, he further described the employment incident and discussed his medical treatment. Appellant noted that after the incident he took ibuprofen and his pain decreased, but would not go away. He noted that he tried to use his left arm less, but that he would have pain in his left shoulder and would put ice on his shoulder every night. Appellant noted that he continued to work and on August 28, 2013 his work requirements were modified because of the pain he had in his left shoulder. He noted that he was given a light-duty limitation for lifting with the left arm. Appellant discussed the medical opinions and argued that they clearly established a causal relationship between his left shoulder injury and the employment incident.

On June 17, 2014 OWCP received additional medical evidence.

In an August 28, 2013 note, Nurse Barbara A. Bridges indicated that appellant should not lift over 15 pounds, or push and pull anything over 20 pounds until seen and evaluated by an orthopedist.

In an August 29, 2013 report, a physician assistant ordered no heavy lifting with appellant's left arm for six weeks.

In a March 3, 2014 MRI scan report, Dr. Shahin S. Amanat, a Board-certified radiologist, found high grade partial thickness tear, versus small full-thickness tear, of the anterior fibers of the supraspinatus tendon approximately two centimeters from the insertion with at least bursal and articular-sided elements to the tear, possible post-traumatic avulsion fragments or osteophyte formation off the humeral head related to the anterior tear of the supraspinatus tendon, and biceps tenosynovitis.

In support of his reconsideration request, appellant also submitted March 20, 2014 handwritten notes from Dr. Patrick O'Brien, an orthopedic surgeon at the Southern Arizona Veterans Administration Health Care System. Dr. O'Brien noted that appellant fell at work one year ago and injured his shoulder, that a magnetic resonance imaging (MRI) scan revealed a left rotator cuff tear, and that appellant would need surgery to repair the tendon. He noted that appellant's history of injury was consistent with this condition. Dr. O'Brien indicated that appellant would need to be off work for three months.

In a September 15, 2014 decision, OWCP reviewed appellant's claim on the merits. It determined that he had now established that the incident occurred as alleged and that he had a left rotator cuff tear. However, OWCP found that the claim remained denied as appellant had failed to provide sufficient evidence with regard to a causal relationship between the rotator cuff tear and the accepted incident of employment.

On April 24, 2015 appellant requested reconsideration. In support of his request, appellant submitted a March 9, 2015 note from Dr. O'Brien which related that appellant suffered a fall at work two years prior when he slipped on loose tiles in his maintenance closet. Dr. O'Brien noted that appellant never had shoulder pain before the fall and that after that fall he sought help at the employee health unit. He noted that appellant has had various treatments since that time, but his pain had persisted, and that he recently had a left shoulder MRI scan confirming a rotator cuff tear. Dr. O'Brien indicated that appellant's mechanism of injury was consistent with his complaints and his physical findings. He noted that appellant would need surgery to correct the damage. Dr. O'Brien related that there was no question in his mind that the fall caused the injury.

On April 24, 2015 Kelley S. Ireland, a program manager for workers' compensation at the employing establishment, noted that there was no possibility of knowing whether this injury happened in the performance of duty given the amount of time it took appellant to address it medically. The employing establishment contended that appellant alleged that the fall occurred on March 27, 2013, but he waited until July 30, 2013 to file his claim.

By an appeal request form received on February 11, 2016, appellant again requested reconsideration.

By letter dated April 15, 2016, OWCP referred appellant to Dr. John R. Klein, a Board-certified orthopedic surgeon, for a second opinion. Appellant did not keep this appointment.

By decision dated May 16, 2016, OWCP denied appellant's claim. It determined that he had not established a causal relationship between the rotator cuff tear and the accepted employment incident. OWCP found that the diagnosis at the time of the employment incident was not that of rotator cuff tear. It noted that appellant did not seek treatment for four months, there was no interval history provided by the physician between his diagnosis and the date of the employment incident, and there was no explanation of any pathophysiologic changes because of the fall. OWCP also noted that appellant failed to report for his second opinion examination.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁴ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, the employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place, and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

ANALYSIS

OWCP accepted that the employment incident of March 27, 2013 occurred as alleged. It further accepted that appellant was diagnosed with a rotator cuff tear. However, OWCP denied his claim as he failed to establish a causal relationship between the accepted employment incident and the accepted medical diagnosis.

The Board finds that appellant has not established a left shoulder condition causally related to the accepted March 27, 2013 employment incident.

Appellant was seen on the date of injury by Dr. Perez-Padilla at the employing establishment health unit. The health unit notes provide an accurate history of the employment incident. However physical examination findings were related as normal and appellant's diagnosis was listed as left shoulder contusion/strain. No opinion was provided regarding causal relationship. The Board has held that medical reports are of limited probative value if they do not provide an opinion regarding causal relationship.⁸

The July 25, 2013 report of Dr. Rees is the first medical report in the record indicating that appellant sought further medical treatment. Dr. Rees suspected a rotator cuff tear at the time, but did not provide a rationalized medical opinion explaining how the March 27, 2013 employment incident resulted in the suspected tear. Medical conclusions unsupported by rationale are of little probative value.⁹ Furthermore, Dr. Rees noted that appellant had left shoulder pain for one to two months, but the fall had occurred four months prior to the July 25, 2013 appointment. He did not provide a clear opinion on causal relationship and thus his report is of little probative value.

Appellant contended that the report of Dr. O'Brien established that his fall at work on March 27, 2013 caused his injury. However, Dr. O'Brien's brief note does not establish causal relationship. He indicated that appellant was his patient, that he suffered a fall at work two years prior when he slipped on loose tiles, that he never had shoulder pain prior to that incident, and that he sought help at employee health on the day of the fall. Dr. O'Brien noted that, despite various treatments since that time, appellant's pain persisted, and a recent MRI scan showed a rotator cuff tear. He concluded that appellant's mechanism of injury was consistent with his complaints and his physical findings. Dr. O'Brien, however, did not explain how the mechanism of injury would have physiologically caused the diagnosed condition.¹⁰ While Dr. O'Brien opined that there was no question in his mind that the fall caused the injury, his report did not

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁸ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

⁹ *D.B.*, Docket No. 14-295 (issued April 25, 2014); *see also Willa M. Frazier*, 55 ECAB 379, 384 (2004).

¹⁰ *Id.*

contain sufficient rationale.¹¹ Dr. O'Brien's report is not sufficient to establish causal relationship. The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹² Dr. O'Brien contends that appellant did not have shoulder pain before the fall, and noted that he sought medical treatment from the employee health unit. The Board has held that a medical opinion that a condition is causally related to an employment injury, but symptomatic after it is insufficient, without supporting rationale to establish causal relationship.¹³ The notation of a rotator cuff tear first appeared in Dr. O'Brien's handwritten notations on March 20, 2014, one year after the March 27, 2013 fall. There is no indication that Dr. O'Brien treated appellant during that year,¹⁴ nor did Dr. O'Brien explain why the tear was not diagnosed earlier.

Neither of the radiologists who reviewed the diagnostic test results discussed causal relationship. Dr. Alcala interpreted a July 30, 2013 x-ray as showing lucency through the great tuberosity which could reflect an acute fracture site without displacement. Dr. Amanat did find a high grade partial thickness tear of the anterior fibers of the supraspinatus tendon in an x-ray dated March 3, 2014. However, these reports are of limited probative value as neither radiologist provided an opinion on causal relationship.¹⁵

Appellant submitted notes by a physician assistant and from a nurse. Evidence from a physician assistant or nurse does not constitute competent medical evidence under FECA as neither is considered as a physician as defined under section 8102(2) of FECA.¹⁶

The Board notes that OWCP attempted to further develop the medical evidence by referring appellant to Dr. Klein for a second opinion. However, appellant did not attend that examination.

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁷ Appellant's honest belief that the March 27,

¹¹ *Supra* note 8.

¹² *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹³ *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

¹⁴ *Supra* note 8.

¹⁵ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

¹⁶ 5 U.S.C. § 8101(2) provides that a physician includes, surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *V.C.*, Docket No. 16-0642 (issued April 19, 2016); *L.C.*, Docket No. 16-1717 (issued March 2, 2017) (nurses); *Allen C. Hundley*, 53 ECAB 551, 554 (2002) (physician assistant). *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

¹⁷ *D.D.*, 57 ECAB 734 (2006).

2013 employment incident caused his medical injury is not in question, but that belief, however sincerely held, does not constitute the medical evidence to establish causal relationship.¹⁸

Appellant has therefore failed to establish that his rotator cuff tear was related to his accepted employment incident. Because he has not provided a rationalized opinion supporting causal relationship, he has not met his burden of proof.¹⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a left shoulder condition causally related to the accepted March 27, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 16, 2016 is affirmed.

Issued: April 17, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁸ *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

¹⁹ *See J.E.*, Docket No. 16-0509 (issued September 16, 2016).